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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/803,390

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JAG Patent Services

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EXAMINER

MONIKANG, GEORGE C

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/803,390	<b>Applicant(s)</b> VIALA, ROAR	
	<b>Examiner</b> GEORGE C. MONIKANG	<b>Art Unit</b> 2615	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2/20/2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____.                                     |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/2/2007, 12/1/2004, 6/3/2004, 4/26/2004</u> .                | 6) <input type="checkbox"/> Other: _____.                         |



## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-4, 7-8, 10 & 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Retchin et al, US Patent Pub. 2004/0062411 A1. (This reference is cited in IDS filed 2/2/2007)

Re Claim 1, Retchin et al discloses a system for underwater entertainment (abstract), the system comprising: a) media player unit for playing media data and generating audio signals therefrom (abstract); b) an input means for inputting the media data into the media player unit (para 0047); c) a water resistant housing for housing the media player unit (para 0047); and d) an output means for outputting the audio signals (para 0046), the output means comprising a water resistant speaker with a sealed diaphragm for contacting a bony portion of a user's head (para 0046; abstract).

Re Claim 3, Retchin et al discloses the system of claim 1, wherein the output means comprises a water resistant speaker for conducting the audio signals to a portion of a user's head (para 0046).

Re Claim 4, Retchin et al discloses the system of claim 3, wherein the water resistant speaker comprises a connector feature for detachably coupling to an output port on the water resistant housing (para 0047: the speaker transducer is wired or wirelessly attached to the sound source).

Re Claim 7, Retchin et al discloses the system of claim 1, wherein the media player is an MP3 player configured to play MPEG-1 Audio Layer-3 compressed format media files (para 0047).

Re Claim 8, Retchin et al discloses the system of claim 1, wherein the input means comprises a memory device for storing the media data (para 0047: mp3 player could store music).

Re Claim 10, Retchin et al discloses the system of claim 1, wherein the input means comprises an input port for transmitting the media data to the media player unit from a media data source (para 0047).

Re Claim 12, Retchin et al discloses the system of claim 1, wherein the water resistant housing comprises controls for operating the media player unit (para 0047).

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 2, 6 & 13-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Retchin et al, US Patent Pub. 2004/0062411 A1 as applied to claim 1 above, in

view of Jannard et al, US Patent Pub. 2004/0160572 A1. (The Jannard et al reference is cited in IDS filed 2/2/2007)

Re Claim 2, Retchin et al discloses the system of claim 1, but fails to disclose means for coupling the media player unit to a user's head. However, Jannard et al does (fig. 3a).

Taking the combined teachings of Retchin et al and Jannard et al as a whole, one skilled in the art would have found it obvious to modify the system of Retchin et al with means for coupling the media player unit to a user's head as taught in Jannard et al (fig. 3a) to enable the mp3 portion of the system to be worn on the user's head.

Re Claim 6, Retchin et al discloses the system of claim 1, but fails to disclose means for plugging the user's ears while the sealed diaphragm is in contact with the bony portion of the user's head. However, Jannard et al does (fig. 3a: eyeglass wear is strapped at a bony portion of user's head while the speakers are located at the user's ears).

Taking the combined teachings of Retchin et al and Jannard et al as a whole, one skilled in the art would have found it obvious to modify the system of Retchin et al with means for plugging the user's ears while the sealed diaphragm is in contact with the bony portion of the user's head as taught in Jannard et al (fig. 3a: eyeglass wear is strapped at a bony portion of user's head while the speakers are located at the user's ears) to protect the ears of the user.

Re Claim 13, Retchin et al discloses a system for playing digital media data, the system comprising an underwater media player comprising: a) a media storage unit for

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storing the digital media data (para 0047: mp3 player); b) a digital processor for reading and converting the digital media data into audio output signals (para 0047: mp3 player); and c) means for transmitting the audio output signals to a water resistant audio output unit (para 0047), wherein a user can listen to the audio output signals from water resistant earphones while submersed in water (abstract) but fails to disclose the water resistant earphones placed in a user's ear canal. However, Jannard et al does (fig. 3a: eyeglass wear is strapped at a bony portion of user's head while the speakers are located at the user's ears).

Taking the combined teachings of Retchin et al and Jannard et al as a whole, one skilled in the art would have found it obvious to modify the system for playing digital media data, the system comprising an underwater media player comprising: a) a media storage unit for storing the digital media data (para 0047: mp3 player); b) a digital processor for reading and converting the digital media data into audio output signals (para 0047: mp3 player); and c) means for transmitting the audio output signals to a water resistant audio output unit (para 0047), wherein a user can listen to the audio output signals from water resistant earphones while submersed in water (abstract) of Retchin et al with the water resistant earphones placed in a user's ear canal as taught in Jannard et al (fig. 3a: eyeglass wear is strapped at a bony portion of user's head while the speakers are located at the user's ears) to protect the ears of the user.

Re Claim 14, the combined teachings of Retchin et al and Jannard et al disclose the system of claim 13, further comprising a water resistant housing for housing the media storage unit and the digital processor (Retchins et al, para 0046-0047), the water



resistant housing being configured for coupling to the user's head (*Jannard et al, fig. 3a*).

Re Claim 15, the combined teachings of Retchin et al and Jannard et al disclose the system of claim 13, further comprising means for transmitting the digital media data to the media storage unit from a media data source (*Jannard et al, para 0075*).

Re Claim 16, the combined teachings of Retchins et al and Jannard et al disclose the system of claim 15, wherein the means for transmitting the digital media data to the media storage unit from the media data source comprises one or more of a physical connection and a wireless receiver (*Jannard et al, para 0075*).

Re Claim 17, the combined teachings of Retchin et al and Jannard et al disclose the system of claim 13, wherein the digital processor is configured to decompress the media data stored on the media storage unit in a compressed format (*Jannard et al, para 0008*).

Claim 18 has been analyzed and rejected according to claim 17.

Re Claim 19, the combined teachings of Retchin et al and Jannard et al disclose the system of claim 13, wherein the water resistant audio output unit comprise a sealed membrane transducer that is configured to couple to the portion of the user's head (*Retchin et al, para 0046*).

Re Claim 20, the combined teachings of Retchin et al and Jannard et al disclose the system of claim 19, further comprising ear plugs (*Jannard et al, fig. 3a: eyeglass wear is strapped at a bony portion of user's head while the speakers are located at the user's ears*).

Re Claim 21, Retchin et al discloses a system for playing music while in a water environment, the system comprising: a) an MP3 player and recorder contained within a water resistant housing for playing and recording MP3 files (para 0047); b) one or more water resistant ear phones with sealed membrane transducers coupled to the MP3 player and recorder for producing audible representations of the MP3 files with the one or more water resistant sealed membrane transducers in contact with a bony portion of a user's head (abstract; para 0046); but fails to disclose c) an input port for downloading MP3 files from a computer. However, Jannard et al does (para 0075).

Taking the combined teachings of Retchin et al and Jannard et al as a whole, one skilled in the art would have found it obvious to modify the system for playing music while in a water environment, the system comprising: a) an MP3 player and recorder contained within a water resistant housing for playing and recording MP3 files (para 0047); b) one or more water resistant ear phones with sealed membrane transducers coupled to the MP3 player and recorder for producing audible representations of the MP3 files with the one or more water resistant sealed membrane transducers in contact with a bony portion of a user's head (abstract; para 0046) of Retchin et al with c) an input port for down-loading MP3 files from a computer as taught in Jannard et al (para 0075) to enable the audio system to be able to receive digital signals from other devices.

Re Claim 22, the combined teachings of Retchin et al and Jannard et al disclose the system of claim 21, further comprising means for coupling the MP3 player and recorder to a portion of the user's body (Jannard et al, abstract; fig. 3a).

Re Claim 23, the combined teachings of Retchin et al and Jannard et al disclose the system of claim 22, wherein the means for coupling the MP3 player to the portion of the user's body comprises a strap (*Jannard et al, para 0081; fig. 3a: 54' & 56'*).

4. Claims 9 & 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Retchin et al, US Patent Pub. 2004/0062411 A1.

Re Claim 9, which further recites, "Wherein the memory device comprises a removable memory unit." Retchin et al does not explicitly disclose a removable memory unit as claimed. Official notice is taken that both the concepts and advantages of providing a removable memory unit are well known in the art. It would have been obvious to use a removable memory unit since it is commonly used to transfer data at faster speeds (e.g. memory sticks).

Re Claim 11, which further recites, "Wherein the input port comprises a USB connection for coupling to the media data source through a computer." Retchin et al does not explicitly disclose a USB connection as claimed. Official notice is taken that both the concepts and advantages of providing a USB connection are well known in the art. It would have been obvious to use a USB connection since it is commonly used as a standard connection means with computers.

### **Contact**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GEORGE C. MONIKANG whose telephone number is

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(571)270-1190. The examiner can normally be reached on M-F. alt Fri. Off 7:30am-5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Vivian can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George C Monikang/  
Examiner, Art Unit 2615

5/12/2008

/Vivian Chin/  
Supervisory Patent Examiner, Art Unit 2615